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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/735,835
Filing Date: December 13, 2000
Appellant(s): BOLAND ET AL.

_____
James M. Stover
For Appellant

EXAMINER'S ANSWER

This is a SUPPLEMENTED Examiner's Answer in response to the appeal brief

filed 04/11/2006 appealing from the Office action mailed 05/19/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6,298,330 B1   Gardenswartz et al.   October 02, 2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-10, 13, 15-18 and 20-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Gardenswartz et al. (US 6,298,330 B1) and Merriam-Webster's Collegiate Dictionary (10th ed.)

Gardenswartz et al. (Hereinafter Gardenswartz) teaches method and system for communicating with a customer's computer based on the offline purchase history of the consumer, comprising:

Claims 1, 18 and 21.

Storing registered customer purchase history information *(historical interaction data)* in a computerized, network-accessible database (C. 5, L. 39-41);

receiving current URL request (current interaction) from the registered customer over the Internet (C. 13, L. 58-60) to identify interaction data associated with previous interaction

(registered customer purchase history information) (C. 9, L. 57-60); said previous registered customer purchase history information including information which is relevant to the current interaction and including registered customer credit card number, social security card number, driver's license number, checking account number, shopper card number, shopper loyalty card number, customer's name, address and telephone number (C. 5, L. 56-61);

accessing said computerized, network-accessible database in accordance with the received current URL request to obtain said identified interaction data thereby providing a context (interactive information which is relevant to the interaction with the registered customer) for the current interaction between the business and the consumer (C. 9, L. 57-60).

Furthermore, the Merriam-Webster's Collegiate Dictionary (10th ed.) defines "context" as "the interrelated conditions in which something exists or occurs" (p. 250). Accordingly, Gardenswartz' teaching of accessing customer purchase history information, including customer credit card number, account number, shopper card number and shopper loyalty card number, in order to relevantly response to the customer inquiry, discloses creating interrelated conditions reflecting prior and current customer shopping behavior in which current interaction with the customer is conducted based on previous customer shopping behavior, thereby disclosing "providing context".

Claims 2 and 20. Receiving communication over the Internet (C. 13, L. 58-60).

Claim 3. Storing customer purchase history information in a database (C. 5, L. 39-41), and classifying said data into one or more purchase behavior classification (C. 7, L. 5-7).

Claim 4. Transmitting said purchase history data to the device (advertiser's server) through which the communication was received (C. 13, L. 58 - C. 14, L. 9).

Claim 5. Delivering said interactive information to the customer so that the customer can act upon receiving said information (C. 9, L. 31-38).

Claim 7. Said method, wherein the communication includes consumer identification data (C. 5, L. 55-61).

Claim 8. Gardenswartz teaches:

maintaining a computerized, network accessible database of past interaction data from previous consumer to business interactions (storing registered customer purchase history information *(historical interaction data)* in a computerized, network-accessible database) (C. 5, L. 39-41);

receiving a communication from the consumer during a current interaction between the business and the consumer (receiving current URL request (current interaction) from the registered customer over the Internet (C. 13, L. 58-60) to identify interaction data associated with previous
registered customer purchase history information (C. 9, L. 57-60); said previous registered customer purchase history information including information which is relevant to the current interaction and including registered customer credit card number, social security card number, driver's license number, checking account number, shopper card number, shopper loyalty card number, customer's name, address and telephone number (C. 5, L. 56-61);

electronically identifying interaction data associated with a previous interaction between the business and the consumer which is relevant to said current interaction (C. 9, L. 57-60);

electronically accessing said historical interaction database in accordance with the received communication to obtain said identified interaction data thereby providing a context for the current interaction between the business and the consumer (accessing said computerized, network-accessible database in accordance with the received current URL request to obtain said identified interaction data) (C. 9, L. 57-60).

Furthermore, the Merriam-Webster's Collegiate Dictionary (10$^{\text{th}}$ ed.) defines "context" as "the interrelated conditions in which something exists or occurs" (p. 250). Accordingly, Gardenswartz' teaching of accessing customer purchase history information, including customer credit card number, account
number, shopper card number and shopper loyalty card number, in order to relevantly response to the customer inquiry, discloses creating interrelated conditions reflecting prior and current customer shopping behavior in which current interaction with the

customer is conducted based on previous customer shopping behavior, thereby
disclosing "providing context".

Claim 9. Receiving communication over the Internet (C. 13, L. 58-60).

Claim 10. Storing customer purchase history data *(historical interaction data)* in a
database (C. 5, L. 39-41), and classifying said data into one or more purchase behavior
classification (C. 7, L. 5-7).

Claim 13. Gardenswartz teaches:

Storing registered customer purchase history information *(historical interaction
data)* in a computerized, network-accessible database (C. 5, L. 39-41);

receiving current URL request (current interaction) from the registered customer
over the Internet (C. 13, L. 58-60) to identify interaction data associated with previous
registered customer purchase history information (C. 9, L. 57-60); said previous
registered customer purchase history information including information which is relevant
to the current interaction and including registered customer credit card number, social
security card number, driver's license number, checking account number, shopper card
number, shopper loyalty card number, customer's name, address and telephone
number (C. 5, L. 56-61);

accessing said computerized, network-accessible database in accordance with
the received current URL request to obtain said identified interaction data thereby
providing a context for the current interaction between the business and the
consumer (interactive information which is relevant to the interaction with the registered
customer) (C. 9, L. 57-60); furthermore, the Merriam-Webster's Collegiate Dictionary
(10th ed.) defines "context" as "the interrelated conditions in which something exists or
occurs" (p. 250); accordingly, Gardenswartz' teaching of accessing customer purchase
history information, including customer credit card number, account
number, shopper card number and shopper loyalty card number, in order to relevantly
response to the customer inquiry, discloses creating interrelated conditions reflecting

prior and current customer shopping behavior in which current interaction with the customer is conducted based on previous customer shopping behavior, thereby disclosing "providing context";

generating a response to the current URL request in accordance with the registered customer identification data, accessed registered customer purchase history information and interaction with the customer, delivering said response to the customer via e-mail (C. 7, L. 25).

Claims 15 and 16. Retrieving by customer's computers Web pages of the registration server via the Internet (C. 6, L. 48-56), thereby indicating *generating a template e-mail on the customer's terminal.*

Claim 17. Storing customer purchase history data *(historical interaction data)* in a database (C. 5, L. 39-41) and classifying said data into one or more purchase behavior classification (C. 7, L. 5-7).

Claim 19. A computer configured to generate interactive information to the customer (C. 6, L. 47-64; C. 13, L. 58-60).

Claims 22-24. Said system as in claim 21 (See reasoning applied to claim 21). Language as to the specific content of the *interaction data, associated data and retrieved data* is given no patentable weight. MPEP 2106 (11) (C) states: *"Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation."* A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Exparte Masham,* 2 USPQ2d 1647 (bd Pat. App. & Inter. 1987). Thus the structural limitations of Claims 22-24 are disclosed by the prior art as described herein.

Also, as described, the limitations of the claim do not distinguish the claimed apparatus from the prior art.

(10) Response to Argument

Applicant argues, that Gardenswartz fails to disclose providing a context for the current interaction between the business and the consumer based on interaction data associated with a previous interaction between the business and the consumer, which is relevant to said current interaction. Also, Applicant argues that the offline purchase history of a consumer; targeted advertisments provided to the consumer; or access to a customer's credit card number, social security account number, driver's license number, loyalty card number, name, address and
telephone number disclosed in Gardenswartz et al. associate a particular business with the consumer or provide context to a current interaction with the consumer.

In response to this argument it is noted, that this is how Specification of the current application describes the historical interaction data (page 6, line 10 - page 7, line 7):

> The consumer 12 interacts with a business 14 via an access or interaction
> channel 16 for a variety of reasons. In the same manner, the business 14
> interacts with the consumer 12 via an access channel 16 for a variety of reasons.
> It should be appreciated that the access channel block 16 of Fig. 1 represents a
> plurality of ways or modes of interaction between a consumer and a business.
> Without being exhaustive, the following are exemplary access channels (modes
> or ways of interaction) for interaction between a consumer and a business: via
> mail, via an electronic network (e.g. Internet), via a telephone (i.e. voice), and in
> person.
>   In accordance with an aspect of the present invention, the business 14
> collects and/or stores information or data relating to each consumer/business
> interaction. The data pertains to every aspect of the interaction and may be
> termed *interaction data*. The interaction data typically includes *customer data*,
> *customer account data*, mode of interaction data, reason for interaction data, and
> other types and/or categories of data pertaining to the consumer/business
> contact or interaction. *The collected and stored interaction data becomes*
> *historical interaction data*. The historical interaction data is used to form a basis

by which the business can determine or establish a context of a present consumer/business interaction in order to facilitate the mutual interaction in accordance with the principles presented herein.

This is how Gardenswartz et al. teaches creating a historical interaction data between a consumer and a business (a store):

Referring back to FIG. 5, the purchase history database 8 is populated with the actual, monitored, or observed offline purchase histories of consumers in step 500. ... The offline purchase histories are organized into master records, each corresponding to a CID (Customer Identification Information) or other identifier associated with a particular consumer. (C. 10, L. 5-11);

Examples of possible CIDs are credit card numbers, debit card numbers, social security card numbers, driver's license numbers, checking account numbers, street addresses, names, e-mail addresses, telephone numbers, frequent customer card numbers, shopper card identifications (SCIDs), or shopper loyalty card numbers issued by one of the stores 2, 4, and/or 6, although any suitable form of identification may be used (C. 5, L. 56-63);

and electronically accessing said historical interaction database in accordance with the received communication to obtain said identified interaction data:

Multiple data structures such as the data structure 460 can be generated so that different IVR (Interactive Voice Response) messages correspond to different lists of PIN numbers. Each IVR message is associated with a particular purchase history classification so that *each consumer hears an IVR message that reflects his or her offline purchase history* (C. 9, L. 57-60).

Each independent claim recites providing a context as "electronically accessing said historical interaction database in accordance with the received communication to obtain said identified interaction data". Gardenswartz et al. explicitly teaches that. Gardenswartz teaches that upon receiving current URL request (current interaction) from the registered customer over the Internet (C. 13, L. 58-60), the system matches the cookie number received from the registered customer computer to the modified

targeted ad profile associated with the cookie number, and then delivers a content to the registered customer computer based on at least one of the purchase behavior (previous interaction) (C. 13, L. 65 - C. 14, L. 4). Furthermore, in another embodiment Gardenswartz teaches that upon receiving inputs from the registered customers over the telephone, interactive voice responses (IVR) are generated so that each IVR message is associated with a particular purchase history, and, each consumer hears an IVR that reflects his or her offline purchase history (C. 9, L. 57-60).

Gardenswartz further defines other relevant to the current interaction with the customer information, including customer credit card number, social security card number, driver's license number, checking account number, shopper card number, shopper loyalty card number, customer's name, address and telephone number (C. 5, L. 56-61).

Furthermore, the Merriam-Webster's Collegiate Dictionary (10th ed.) defines "context" as "the interrelated conditions in which something exists or occurs" (p. 250). Examiner stipulates that Gardenswartz' teaching of accessing customer purchase history information, including customer credit card number, account number, shopper card number and shopper loyalty card number, in order to relevantly response to the customer inquiry, discloses creating interrelated conditions reflecting prior and current customer shopping behavior in which current interaction with the customer is conducted based on previous customer shopping behavior, thereby disclosing "providing context".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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